

# SENATE MOTION

**MR. PRESIDENT:**

**I move** that Engrossed House Bill 1849 be amended to read as follows:

- 1 Page 1, line 9, after "(c)" insert ",".
- 2 Page 1, line 9, delete "and".
- 3 Page 1, line 9, after "(d)," insert "**and (g),**".
- 4 Page 2, line 14, after "firearm" insert ", **including whether the**
- 5 **person failed to complete a specified condition under subsection (d)**
- 6 **or whether the person has committed a subsequent offense**".
- 7 Page 2, line 23, delete "reversed, vacated, set aside, or".
- 8 Page 2, between lines 24 and 25, begin a new paragraph and insert:
- 9 "**(g) The right to possess a firearm shall be restored to a person**
- 10 **whose conviction is reversed on appeal or on post-conviction**
- 11 **review at the earlier of the following:**
- 12 **(1) At the time the prosecuting attorney states on the record**
- 13 **that the charges that gave rise to the conviction will not be**
- 14 **refiled.**
- 15 **(2) Ninety (90) days after the final disposition of the appeal or**
- 16 **the post-conviction proceeding.**".
- 17 Page 4, line 6, after "(c)" insert ",".
- 18 Page 4, line 6, delete "and".
- 19 Page 4, line 6, after "(d)," insert "**and (l),**".
- 20 Page 4, line 32, after "firearm" insert ", **including whether the**
- 21 **person failed to complete a specified condition under subsection (d)**
- 22 **or whether the person has committed a subsequent offense**".
- 23 Page 4, line 41, delete "reversed, vacated, set aside, or".
- 24 Page 4, after line 42, begin a new paragraph and insert:
- 25 "**(l) The right to possess a firearm shall be restored to a person**
- 26 **whose conviction is reversed on appeal or on post-conviction**
- 27 **review at the earlier of the following:**
- 28 **(1) At the time the prosecuting attorney states on the record**
- 29 **that the charges that gave rise to the conviction will not be**
- 30 **refiled.**
- 31 **(2) Ninety (90) days after the final disposition of the appeal or**

**the post-conviction proceeding.**

SECTION 3. IC 35-35-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The court shall not accept a plea of guilty or guilty but mentally ill at the time of the crime without first determining that the defendant:

- (1) understands the nature of the charge against him;
- (2) has been informed that by his plea he waives his rights to:
  - (A) a public and speedy trial by jury;
  - (B) confront and cross-examine the witnesses against him;
  - (C) have compulsory process for obtaining witnesses in his favor; and
  - (D) require the state to prove his guilt beyond a reasonable doubt at a trial at which the defendant may not be compelled to testify against himself;
- (3) has been informed of the maximum possible sentence and minimum sentence for the crime charged and any possible increased sentence by reason of the fact of a prior conviction or convictions, and any possibility of the imposition of consecutive sentences; ~~and~~
- (4) has been informed that the person will lose the right to possess a firearm if the person is convicted of a crime of domestic violence (IC 35-41-1-6.3); and**
- (5) has been informed that if:**
  - (A) there is a plea agreement as defined by IC 35-35-3-1; and
  - (B) the court accepts the plea;

the court is bound by the terms of the plea agreement.

(b) A defendant in a misdemeanor case may waive the rights under subsection (a) by signing a written waiver.

(c) Any variance from the requirements of this section that does not violate a constitutional right of the defendant is not a basis for setting aside a plea of guilty.

SECTION 4. IC 35-38-1-7.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7.7. (a) At the time of sentencing, a court shall determine whether a person has committed a crime of domestic violence (as defined in IC 35-41-1-6.3).**

**(b) A determination under subsection (a) must be based upon:**

- (1) evidence introduced at trial; or**
- (2) a factual basis provided as part of a guilty plea.**

**(c) Upon determining that a defendant has committed a crime of domestic violence, a court shall advise the defendant of the consequences of this finding.**

**(d) A judge shall record a determination that a defendant has committed a crime of domestic violence on a form prepared by the division of state court administration."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1849 as printed April 4, 2003.)

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Senator LONG